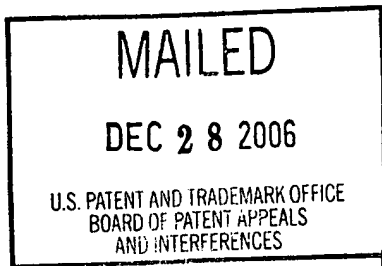


UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRUCE L. DAVIS and GEOFFREY B. RHOADS

Application No. 09/697,009

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on November 29, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

In response to the examiner's answer mailed May 24, 2006, appellants filed a reply brief on July 17, 2006. In the reply brief, appellants raised a number of new issues in objection to the examiner's answer.

As noted by the Manual Of Patent Examining Procedure (MPEP) § 1207.05) (8th ed., Rev. 3, August 2005), 37 CFR § 41.43 states in part:

(a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or **may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.**

The examiner mailed an action on October 18, 2006 noting the reply brief.

Beneath the heading "Reply Brief Noted", the examiner responds to the new issues raised in the reply brief. The examiner's responses to the reply brief are significant to the point of constituting a Supplemental Examiner's Answer

MPEP § 1207.05 also states that **"Every supplemental examiner's answer must be approved by a Technology Center (TC) Director or designee. . . ."**

Therefore, although a Supplemental Examiner's Answers is permitted in a response to a reply brief, it must be approved by persons authorized to grant such approval (the Technology Center Director(s) or the Director's designee). This response to the reply brief does not contain the proper authorization.

Accordingly, it is

ORDERED that the application is being returned to the Examiner to resubmit an action acknowledging receipt of the Reply Brief:

- a) with proper approval to include a Supplemental Examiner's Answer if the examiner wishes to present arguments to new issues raised in the brief, or

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- b) without presenting any new arguments therein, and
- c) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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